

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Campbell Analyst: Marion Mann DeJong Bill Number: AB 735  
Related Bills: See Legislative History Telephone: 845-6979 Introduced Date: 02/19/2003  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Taxpayer Privacy Bill of Rights Act/Expends Scope of Taxpayers' Rights Advocate to Include Taxpayers' Privacy Rights

### SUMMARY

This bill would:

- Prohibit Franchise Tax Board (FTB) officers or employees from releasing or threatening to release a taxpayer's personal or financial information to the general public.
- Expand the Taxpayers' Rights Advocate's authority to review and resolve taxpayer complaints and verify that appropriate disciplinary action is taken against any FTB officer or employee who violates a taxpayer's privacy rights.

### PURPOSE OF THE BILL

According to the author's staff, this bill is intended to protect taxpayer privacy.

### EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2004, and would apply as of that date.

### POSITION

Pending.

#### Summary of Suggested Amendments

Amendments are needed to resolve the concerns raised in "Implementation Considerations." Department staff is available to assist the author with these amendments.

### ANALYSIS

#### FEDERAL/STATE LAW

The Taxpayers' Bill of Rights established the Taxpayers' Rights Advocate to coordinate the resolution of taxpayer complaints and problems, including any complaints regarding unsatisfactory treatment of taxpayers by FTB employees.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director  
Gerald H. Goldberg

Date  
03/13/03

Existing federal and state laws prohibit the disclosure of any taxpayer information, except as specifically authorized by statute. Any Franchise Tax Board employee or member responsible for the unauthorized disclosure of federal or state tax information is subject to criminal prosecution, disciplinary action, and/or loss of employment. Improper disclosure of federal tax information is punishable as a felony and improper disclosure of state tax information is punishable as a misdemeanor.

Department policy treats all information received, maintained, and generated as confidential unless it is specifically made public by statute. This includes federal, state, and local tax information, senior citizens' property tax assistance information, political reform audit information, personnel records, and criminal offender record information.

Each FTB employee must complete annual disclosure education training that explains the disciplinary actions that can and may be taken for any unwarranted access, inspection or misuse of taxpayer records, as well as any unauthorized disclosure of taxpayer information. Each employee is required to sign an annual Confidentiality Statement after reviewing the department policies on disclosure.

Current state law provides that a state officer or employer shall not engage in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.

Department policy lists activities that are inconsistent, incompatible, or in conflict with the duties of FTB employees. Incompatible activities include providing confidential information to persons to whom issuance of this information has not been authorized. Department policy provides rules of conduct for FTB employees. FTB officers and employees are prohibited from:

- disclosing confidential information in writing, electronically, or verbally to unauthorized individuals.
- indicating or implying that an examination of a tax return will be initiated as a reprisal against anyone.

It is department policy to investigate alleged violations of law, rules, regulations and/or internal policies relating to activities that are inconsistent, incompatible, or in conflict with the duties of FTB employees. Disciplinary action is taken when appropriate. When there is evidence of significant criminal wrongdoing, the matter is referred to the appropriate prosecutor's office for consideration of criminal charges.

### THIS BILL

This bill would prohibit FTB officers or employees from releasing a taxpayer's personal or financial information to the general public, unless authorized by the courts. Unauthorized release of, or threat to release, this information when the taxpayer rejects a settlement offer would be grounds for termination or other disciplinary action. This provision would be known as the Taxpayer Privacy Bill of Rights.

This bill also would expand the Taxpayers' Rights Advocate's authority to review and resolve taxpayer complaints to specifically include complaints regarding the unauthorized release of taxpayers' personal and financial information to the general public by FTB officers or employees. The Advocate would verify that the board takes appropriate disciplinary action against any officer or employee who violates a taxpayer's privacy rights.

## IMPLEMENTATION CONSIDERATIONS

This bill requires the Advocate to verify that the “board” takes appropriate disciplinary action against an employee who violates a taxpayer’s rights. Generally, the department, not the three-member Franchise Tax Board, handles personnel actions.

The bill appears to narrow existing disclosure provisions from any unauthorized disclosure at any time to when the taxpayer rejects an FTB offer to settle a proposed state tax liability. It also appears to allow only disciplinary actions and termination of employment. Currently, action taken against an FTB employee could include criminal charges as well as disciplinary actions and would be taken under any circumstance regarding unauthorized disclosure.

This bill prohibits disclosure of certain information to the general public, unless authorized by the courts. Department staff is unclear how this would impact information that is disclosed as authorized under statute or information that is confidential but is made public (e.g., appeals to the Board of Equalization or criminal prosecutions for tax evasion). For example, it is unclear if this bill would prohibit the department from issuing press releases related to criminal proceedings.

This bill does not define the phrase “a taxpayer’s personal or financial information.” Clear definitions are necessary to ensure that the bill is implemented as the author intended and to prevent disputes between taxpayers and the department. For example, it is unclear whether the bill is intended to apply to business entities. If so, it would conflict with existing law authorizing the disclosure of certain corporate information. In addition, personal information may include information in the public domain, such as criminal prosecutions.

If amended to resolve these issues, this bill would not significantly impact department policy or procedures since it is current department policy to investigate alleged violations of law, rules, or internal policies by FTB officers or employees and thereafter take appropriate disciplinary action.

## **OTHER STATES’ INFORMATION**

A review of *Florida*, *New York*, *Illinois*, *Michigan*, *Minnesota* and *Massachusetts* tax laws found that all of these states prohibit disclosure of taxpayer information, except as specifically authorized by statute.

## **FISCAL IMPACT**

If this bill were amended to resolve the implementation considerations addressed in this analysis, the bill would not impact the department’s costs.

## **ECONOMIC IMPACT**

This bill would not impact the state’s income tax revenue.

## **LEGISLATIVE STAFF CONTACT**

Marion Mann DeJong  
Franchise Tax Board  
845-6979  
[marion.dejong@ftb.ca.gov](mailto:marion.dejong@ftb.ca.gov)

Brian Putler  
Franchise Tax Board  
845-6333  
[brian.putler@ftb.ca.gov](mailto:brian.putler@ftb.ca.gov)